STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

CENTRAL ILLINOIS LIGHT COMPANY d/b/a AmerenCILCO,	:	
Proposal to implement a competitive procurement process by establishing Rider BGS, Rider BPS-L, Rider RTP, Rider RTP-L, Rider D and Rider MV	:	No. 05-0160
CENTRAL ILLINOIS PUBLIC SERVICE COMPANY d/b/a AmerenCIPS,	:	
Proposal to implement a competitive procurement process by establishing Rider BGS, Rider BPS-L, Rider RTP, Rider RTP-L, Rider D and Rider MV	:	No. 05-0161
ILLINOIS POWER COMPANY d/b/a AmerenIP,	:	
Proposal to implement a competitive procurement process by establishing Rider BGS, Rider BPS-L, Rider RTP, Rider RTP-L, Rider D and Rider MV	:	No. 05-0162

INITIAL BRIEF OF ILLINOIS INDUSTRIAL ENERGY CONSUMERS

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INITIAL BRIEF OF ILLINOIS INDUSTRIAL ENERGY CONSUMERS

A diverse group of large industrial electricity consumers: Caterpillar Inc.; ConocoPhillips; U.S. Steel; Marathon Petroleum Company; Olin Corporation; U.S. Silica Company; ASF-Keystone; Air Products & Chemicals Company; PPG Industries, Inc.; Archer Daniels Midland Company; Tate & Lyle, Inc.; Cargill, Inc.; Afton Chemicals Company; Eagle Materials Company; and International Steel Group; are participating in this case as the Illinois Industrial Energy Consumers ("IIEC" or "IIEC Companies"). Pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission ("Commission") (83 Ill. Adm. Code 200.800) and the briefing schedule set by the Administrative Law Judge ("ALJ"), the intervenors named above present their Initial Brief in this docket for the Commission's consideration.

This evidentiary proceeding investigates the propriety of proposed tariffs, filed by Central Illinois Light Company, d/b/a AmerenCILCO; Central Illinois Public Service Company, d/b/a AmerenCIPS; and Illinois Power Company, d/b/a AmerenIP ("Ameren" or "Ameren Companies"), to implement a competitive wholesale auction to procure electricity supply and to "translate" the auction results into tariffed retail rates. Ameren seeks Commission preapproval of both the procurement process and the tariff rates resulting from the proposed automatic ratemaking "translations." IIEC's Initial Brief addresses selected factual and legal issues[1] raised by Ameren's proposals, the evidence of record, applicable provisions of the Public Utilities Act ("Act" or "PUA") (220 ILCS 5/1-101 et seq.), and relevant Illinois and federal case law.

[1] This Brief is organized in accordance with the Brief Outline approved by the ALJ, using all those elements of the outline relevant to IIEC's positions and arguments in this proceeding with additional sub-captions included in the approved outline for the sake of IIEC's arguments.

I.

INTRODUCTION

On February 28, 2005, Ameren filed proposed tariff sheets that define (a) an auction process for acquiring electricity supply for Ameren's bundled service offerings, (b) a ratemaking process that uses the results of the auction and a series of formulae to set rates for customers served under its regulated retail tariffs and (c) proposed retail commodity and related tariffs. Ameren seeks Commission approval of the entire collection of proposed tariffs -- those relating to the auction process, and those describing the process by which Ameren would set rates after its auctions. Ameren also seeks a Commission predetermination that whatever retail rates result from the combined auction and ratemaking processes will be just and reasonable.

In its Suspension Order entered March 9, 2005, the Commission suspended the proposed tariffs and ordered "without answer or other formal pleadings," commencement of "a hearing concerning the propriety of the proposed tariff sheets to implement a competitive procurement process." (Suspension Order March 9, 2005 at 1).

IIEC Companies in this proceeding are not endorsing or opposing the auction process that is the primary subject of this proceeding. They have made certain recommendations to the Commission assuming, for the purpose of their presentations, implementation of some version of an auction for power procurement by Ameren. However, IIEC does have concerns about the auction process as proposed by Ameren. Those concerns have caused IIEC to recommend that the Commission provide for a formal annual review of the auction process to consider, among other things, whether the process, or some other approach to power acquisition, will produce a lower supply cost for Ameren's end-use customers.

The Commission must keep in mind that, ultimately, the resolution of the power procurement issues, and the approval of the associated product offerings will, directly or indirectly, affect the price that Ameren's largest customers pay for electrical power and energy. Ameren's largest customers likely will be affected to a greater degree by the Commission's decision in this case. Ameren's largest customers are a fundamental and important part of the economy of central and southern Illinois. They employ tens of thousands of residential customers affected by the Ameren proposal. As Mr. Nelson, an Ameren Vice President explained, it is important to keep industrial and commercial customers in Illinois, because of the tax dollars and jobs they generate as well as providing customers for the Ameren Operating Companies. (Nelson Tr. 162). Indeed, in many instances, the ability of these residential customers to pay for electricity may be directly related to their ability to remain employed in some capacity by larger consumers of electricity or other businesses serving those large consumers. Therefore, the Commission cannot and should not consider only the desires and needs of the smallest customers in the Ameren service territory and/or the interest of Ameren Companies to the exclusion of the needs and desires of larger customers.

Further, the Commission should not establish policies that artificially promote competition "for competition's sake." Such policies would work to the detriment of the very customers that competition is supposed to benefit. In this proceeding, the Commission should give careful consideration to the needs and desires of these larger customers, as well as those of smaller customers.

To assist the Commission in that regard, IIEC has presented the testimony of Mr. Robert R. Stephens, Mr. James R. Dauphinais and Mr. Brian C. Collins of the firm of Brubaker & Associates, Inc. These gentlemen and their firm have extensive experience in the areas of energy procurement and public utility regulation, providing services to industrial and institutional customers, and on

occasion, state regulatory agencies. The firm provides analysis of energy procurement options based on consideration of prices and reliability as related to the needs of its clients, and it prepares rate, feasibility, economic and cost of service studies relating to energy and utility services. They also have prepared depreciation and feasibility studies relating to utility service, assisted in contract negotiations for utility services, and provided technical support to legislative activities. (*See* Stephens Dir. IIEC Ex. 1, App. A at 2:386-394).[2]

Mr. Stephens and Mr. Collins have been members of the Illinois Commerce Commission Staff, working in various areas of the utility business, and both hold engineering and MBA degrees. Mr. Dauphinais has previously been employed by Northeast Utilities and represented Northeast on the New England Power Pool Stability Task Force. He was responsible for the day-to-day administration of Northeast Utilities Open Access Transmission Tariffs and has presented testimony before numerous state commissions and the Federal Energy Regulatory Commission ("FERC"). (*See* IIEC Ex. 1 App. A; IIEC Ex. 2, App. A; and IIEC Ex. 3, App. A).

IIEC Companies in this proceeding have made several carefully considered, specific recommendations to the Commission. They have also, in the interest of compromise, entered into a stipulation with Ameren to resolve certain issues addressed only by IIEC and Ameren in testimony in this proceeding. Those issues relate to: the provision of interruptible electric service; formal review of the Ameren auction process if approved by the Commission; the implementation of a cost-based demand charge in Ameren's fixed price product; and the IIEC request for a three-year

[2] When citing prefiled testimony in this Initial Brief, IIEC has provided citations to the page number in format of "Page(s):Line(s) or Page:Line-Page:Line." References to the transcript in Ameren Dockets 05-0160, et al. (Consolidated) will be designated as "Tr. ___," references to the Joint Transcripts in ComEd 05-0159 and Ameren 05-0160, et al., will be designated as "Jt. Tr.___". When citing to IIEC testimony, IIEC is referencing the "corrected" testimony placed in evidence on September 6, 2005.

fixed price product. (*See* Ameren/IIEC Jt. Ex. 1, the Stipulation and Agreement between IIEC and the Ameren Companies (the "Ameren/IIEC Stipulation")).

IIEC Companies in this proceeding support Ameren's offer of a fixed price product to customers with demands of 1 MW and over. They recommend the Commission approve the Ameren decision to offer a fixed price product to such customers.

IIEC recommends that a separate auction segment be established for the 3 MW and above customer class to recognize the significant differences in load profile and costs of service associated with this group and to promote the efficiency of the combined Ameren and Commonwealth Edison Company ("ComEd") auctions.

IIEC recommends that the 30-day enrollment sign-up window for BGS-LFP customers be approved by the Commission.

In addition, to help mitigate some of the load risk to potential auction suppliers and thereby reduce costs to customers, IIEC recommends that customers eligible for the annual fixed price product, and in the segment that includes customers with demands of 1 MW and over, advise Ameren prior to any auction of their interest in becoming eligible for that product (i.e., prequalify their load).

Ameren has agreed in the Ameren/IIEC Stipulation to include a capacity component in retail rates (at a future date) for any fixed price product offered to customers with an electric demand of 1 MW or more, in order to recognize the benefits of load factor on overall customer costs. The Commission should approve the substantive provisions of the Ameren/IIEC Stipulation.

IIEC Companies also originally recommended that because a one-year fixed price option may not satisfy the needs of large customers, a multi-year product should be established for these

customers. Pursuant to the Ameren/IIEC Stipulation, assuming the Stipulation is accepted by the Commission, IIEC will not pursue this recommendation in this case.

Assuming an auction process is approved for Ameren, to maximize the competitiveness of the auction, IIEC Companies support a single auction for the Ameren Companies and ComEd.[3]

They further recommend that as a condition of its approval of the auction process, the Commission direct Ameren to work with ComEd, PJM and the Midwest Independent System Operator ("MISO") to develop a single common deliverability test for resources in the combined PJM and MISO footprint for delivery of power to the Ameren and ComEd load zones within the State of Illinois. Ameren should report the status of that effort to the Commission every ninety (90) days until the common deliverability test is in place for the MISO and PJM.

IIEC recommends that Ameren's proposed Rider MV be modified to ensure that Ameren's expressed intent to bill self-generating customers taking Rider RTP-L for capacity on a per kW-day basis is properly reflected in the tariff.

IIEC recommends that if the Commission does not approve the Ameren/IIEC Stipulation on the provision of interruptible service for BGS-LRTP customers with demands of 5 MW and more, it require Ameren to permit customers under Ameren's Rider BGS-L to directly participate as Demand Response Resources in the MISO markets.

IIEC originally recommended the Commission require Ameren to modify its BGS-LRTP contract and Rider RTP-L proposals to grant hourly pricing customers who meet the MISO Interruptible Demand requirements an exemption from capacity charges. However, under the Ameren/IIEC Stipulation, the Ameren Companies agreed to provide an Interruptible Demand

[3] ComEd in Commission Docket 05-0159 has proposed an auction process similar to the Ameren auction process.

service for BGS-LRTP customers with demands of 5 MW or greater. IIEC recommends the Commission accept this stipulation on interruptible electric service.

IIEC recommends the Commission reject Ameren's proposed Default Supply Service Availability Charge – the Rider D charge. The charge is not cost based, and it applies to customers who do not take power and energy service from Ameren. Ameren has not shown that the charge, which can act as a deterrent to retail competition, is just and reasonable.

IIEC recommends that the initial auctions of Ameren (and ComEd) be conducted in September 2006. Holding the auction in September will provide a more accurate price with a lower risk premium.

IIEC opposes the use of a load cap. Use of a load cap will serve to raise auction prices, and it provides no assurance of protection from market abuses or protection from manipulation of auction rules.

Because of their concerns about the auction process itself, IIEC Companies originally recommended that the Commission, to the extent it approves an auction, conduct a formal review on an annual basis, to determine whether the auction process, a different version of that process, or some other process is the most appropriate means for acquiring the lowest cost supply of power available in the market for all end-use customers. However, under the Ameren/IIEC Stipulation, IIEC and Ameren have stipulated to formal review of the auction process after the first two auctions and every two (2) years thereafter.

III.

LEGAL ISSUES

A. Background: The Illinois Electric Service Customer Choice and Rate Relief Law

The Illinois Electric Service Customer Choice and Rate Relief Law (the "Customer Choice Law") was adopted by the Illinois General Assembly in 1997 and signed into law on December 15, 1997. (220 ILCS 5/16-101 et seq.). Under the Customer Choice Law, utilities are required to offer delivery service, so that end-use customers can choose suppliers, other than the electric utility, for their electric power and energy requirements. (220 ILCS 5/16-104).

Base rates were frozen for all customers. (220 ILCS 5/16-111(a)). Rates were reduced by as much as 20% for residential customers in the Ameren Companies service territories. (220 ILCS 5/16-111(b)). Also, utilities were given the option to avoid the rate decrease and rate freeze, but if they did, they were required to file biennial rate case proceedings without regard to whether the filing would produce a rate increase or decrease. (220 ILCS 5/16-101(b)). The Ameren Companies elected to accept the rate freeze and rate decrease.

Also, utilities were given the option to reorganize and restructure their businesses and the right to collect transition charges to allow them to collect the cost of investments they believed would be stranded or otherwise unrecoverable if customers were allowed to choose a supplier other than an electric utility. (220 ILCS 5/16-108(f) and 16-111(g)).

To allow utilities to respond to competition from third-party suppliers, the General Assembly granted the utilities the right to request that the Commission declare a tariffed service or services competitive. (220 ILCS 5/16-113). Utilities on the other hand, were required to ". . . continue offering to retail customers each tariff service that it offered as a distinct and identifiable service on the effective date of the Amendatory Act of 1997 until the service. . ." was declared

competitive or abandoned. (220 ILCS 5/16-103(a)). Ameren has not abandoned any service nor has it sought to declare any service competitive. (Cooper Tr. 291).

Pursuant to Section 16-111(g) of the Act, AmerenIP voluntarily sold its nuclear generating capacity to AmerGen Energy Company, LLC and transferred its fossil generating capacity to an affiliate. (Illinois Power Company, 1999 Ill. PUC Lexis 467 (July 8, 1999); Illinois Power Company 1999 Ill. PUC Lexis 809 (Oct. 26, 1999)). AmerenCILCO transferred its generating assets to an affiliate. (Central Illinois Light Company, 2002 Ill. PUC Lexis 414 (April 10, 2002)). AmerenCIPS also transferred its generation assets to an affiliate. (Central Illinois Public Service Company, 1999 Ill. PUC Lexis 766 (Oct. 12, 1999)).

In its adoption of the Customer Choice Law, the General Assembly expressed the intention that all customers benefit, in an equitable and timely fashion, from "lower costs" of electricity that would result from "retail and wholesale" competition. (220 ILCS 5/16-101A(e)). The General Assembly intended that the " . . . competitive wholesale and retail market . . ." benefit "all Illinois citizens." (220 ILCS 5/16-101A(d)). To that end, the Legislature intended the Commission to act to promote the development of an effectively competitive electricity market, that would operate efficiently and be equitable to all Illinois consumers. The legislature intended that there were to be sufficient protections in place to ensure that ". . . all customers continued to receive safe, reliable, affordable, and environmentally safe electric service." (220 ILCS 5/16-101A(d)).

The retail market in the Ameren service territories has not developed in a manner that ensures "all citizens" in the Ameren service territory will receive the benefits of effectively competitive wholesale and retail markets. The Ameren proposal in its present form has the potential to allow its 1 MW and over customers (citizens of the State of Illinois) to possibly benefit from the wholesale and retail markets. Ameren specifically proposes to allow its largest customers

(1 MW and over) access to the lowest discoverable wholesale price, which it claims will be produced by its recommended auction process.

IV.

SUFFICIENCY OF THE COMPETITIVE MARKET

C. Retail Market Conditions

Illinois customers, and particularly large customers, currently are not getting full benefits of a competitive retail market. This is illustrated by the wide disparity between the number of Retail Electric Suppliers ("RESs") serving customers in the Ameren territories and the number of wholesale suppliers who might participate in the proposed auctions. Specifically, only five or fewer RESs operated in the Ameren territories in 2004, while more than 30 wholesale suppliers might participate in the proposed wholesale auctions. (Stephens Dir. IIEC Ex. 1 at 4:74-80). As indicated in the testimony of the Coalition of Energy Suppliers ("CES") witness Dr. O'Connor and by additional information adduced through cross-examination, the retail supplier market in Illinois, while modest, expanded in the period 2001 through 2004. However, it has retracted in 2005. (*See* O'Connor CES Ex. 1.12; O'Connor Jt. Tr. 219-220; IIEC Cross Ex. 2). Also, Ameren witness Mr. Nelson agreed that a comparison of switching statistics from December 31, 2004 and June 30, 2005 (six months difference) suggests a drop in kWh provided by RESs in the AmerenCIPS territory for large commercial and industrial ("C & I") customers from 31% of the total kWh provided to C & I customers to 11% of the total. In the same six-month period, in the AmerenIP territory, kWh provided by RESs to C & I customers dropped from 48% to 40%. (Nelson Tr. 166, 176). With respect to the numbers of customers that have switched, in the combined Ameren territories only 58

of the 470 large industrial customers (12%) currently take RES service. (Stephens Dir. IIEC Ex. 1 at 6:109-113).

Among the many reasons why there are so few active RESs in the Ameren service territories is the effect of what is commonly known as the "Reciprocity Clause" (220 ILCS 5/16-115(d)(5)). This is a provision of the Customer Choice Law that conditions retail market supplier eligibility on the retail access policies of other jurisdictions. The Reciprocity Clause no doubt has limited the number of potential suppliers that can become certified in Illinois as RESs. (Stephens Dir. IIEC Ex. 1 at 5:83-87). However, other impediments exist to RES activity in the Ameren territories as well. (*See* O'Connor Dir. CES Ex. 1.0 at 41:930-42:933). These impediments include difficulty in dealing with transmission access. (O'Connor Jt. Tr. 215).

In summary, in the segment of the retail supply market that many consider to be the one in which retail suppliers are most likely to compete, the level of retail supplier activity has been unimpressive. Until the retail market conditions improve sufficiently for the emergence of a competitive market that provides "economically viable" options to all customers, it is important to ensure that the utility provides an avenue to the more competitive wholesale supply market. IIEC will discuss this need further in Section V.I.1., below.

V.

AUCTION DESIGN ISSUES

C. Multiple Round Descending Clock Format

1. Load Caps

a. Fifty Percent (50%) Load Cap

Ameren proposes to use a declining clock vertical tranche auction to procure the power supply necessary to meet its customers' demand for electricity. If Ameren's auction procurement plan is approved by the Commission, Ameren proposes to impose a load cap -- a maximum number of tranches that a bidder can bid on and win -- as an element of the auction rules. (LaCasse Dir. Resp. Ex. 6.0 at 48:1086). The announced purpose of the load cap is to limit the direct participation of large potential suppliers as bidders or winners in the auction to supply electricity for the utility's bundled service customers. (Nelson Dir. Resp. Ex. 2.0 at 22:486-489). IIEC opposes imposition of this artificial barrier to open competition and supply at the lowest prices.

Ameren's original proposal set the proposed load cap at 50%. (LaCasse Dir. Resp. Ex. 6.0 at 48:1086). Thus, the cap would prevent any single supplier from winning contracts to supply more than 50% of the auctioned load (expressed in number of tranches) -- even if its bid might result in lower prices to Ameren and its retail bundled service customers. (Collins Dir. IIEC Ex. 3 at 8:145-152).

One consequence of restricting auction competition through the imposition of an auction load cap would be that efficient suppliers, able and willing to provide large quantities of electricity at prices lower than their competitors, would be artificially constrained in the amount of low-cost power and energy they would be allowed to supply. (Collins Dir. IIEC Ex. 3 at 8:145-148). A predictable consequence of such limitations would be a higher than necessary auction clearing price

and, thus, a higher price to consumers. With load caps, even if such suppliers sold their "excess" supplies to other bidders, retail customers would not be supplied at the lower cost otherwise available through an unconstrained auction. Those efficient, lower priced supplies could only be provided through a winning "middleman-bidder" that would impose its own markup on the low-price supply. (Collins Reb. IIEC Ex. 6 at 10:191-192).

For its part, Ameren defended load caps as a safeguard in the auction and noted that similar safeguards have been employed in New Jersey. (Nelson Dir. Resp. Ex. 2.0 at 22:482-490). Dr. LaCasse discusses the proposed load cap on behalf of Ameren. (*Id.*). The Commission Staff ("Staff") also supported a load cap. (Salant Dir. Staff Ex. 1.0 at 69:1569-1570).

The arguments of Staff and Ameren all fall into one or more of only three descriptive categories:

- attempts to compensate for market deficiencies;
- attempts to provide an appearance of the "vigorous competition" the auction proposal depends on to function correctly (Nelson Reb. Resp. Ex. 10.0 at 9:194-197); or
- attempts to compensate for weaknesses in the auction process.

In all these arguments defending load caps, the price to consumers is addressed only indirectly, if at all. Consumers seek the lowest prices for supply, without an artificial load cap to benefit less efficient suppliers.

The Staff expressed considerable concern about the competitiveness of the underlying markets on which the auction would rely. (*See generally* Sibley Dir. Staff Ex. 2.0). Accordingly, Staff sought to limit the participation of large bidders. (*See e.g.*, Sibley Dir. Staff Ex. 2.0 at 24:412-421). At the same time, Staff's expert acknowledged the negative effects of load caps, cautioning -- as does Mr. Collins -- first, that a "load cap," by reducing the supply that a large bidder can

provide, potentially makes the auction less competitive (Sibley Dir. Staff Ex. 2.0 at 25:427-429), and second, that "if a load cap causes low-cost generation capacity to be excluded from the auction in favor of higher cost generation, then the auction price could be adversely affected." (*Id.* at 25:436-438). Mr. Sibley therefore advises that "when setting the level of the load cap, one should take care to not exclude low-cost capacity from the auction." (*Id.* at 25:435).

Ameren suggests that a load cap is needed to encourage the participation of more suppliers in the auction, promoting vigorous competition. (Nelson Reb. Resp. Ex. 10.0 at 9:192-197). Ameren and Staff assert that participation by more entities will lead to lower prices. However, they do not explain how load caps will attract lower-cost bidders -- who can profitably provide supply at lower prices -- that are not already participating in the auction. Rather, their argument that load caps will produce lower prices is premised on the idea that caps will eliminate either abuses of market power or auction design defects that otherwise would permit higher prices.

Also, the testimony of Staff witness Dr. Salant calls that claimed need into question. Dr. Salant testified that an auction was conducted for one of the New Jersey utilities -- with no load caps. He testified further that the "no load cap" auction was a "success," just like the capped auction of other utilities in that State. (Salant Jt. Tr. 1061-1063). The New Jersey utility involved had a relatively small load. (Salant Jt. Tr. 1061-1062). Presumably, Ameren's load would be even more attractive to potential bidders.

IIEC supports participation by as many suppliers as can reliably and economically provide supply. However, IIEC disagrees that a load cap is the way to promote vigorous competition in the auction. The fact that an auction may have more bidders does not mean there will be more low-cost or low-price suppliers competing in the auction. Even if a load cap encouraged a larger number of suppliers to participate, elimination of low-price or low-cost bids via the load cap will

reduce the competitiveness of the auction, and in turn increase the auction clearing price. (Collins Dir. Ex. 3 at 10:184-186). Dr. Salant agrees that lower cost bidders will bid more aggressively in an auction. (Salant Jt. Tr. 1087).

Also, Dr. Salant's price-taker proposal does not, as he suggests, preserve the benefits of unfettered (no load cap) competition in the proposed auction. While the proposal permits all suppliers, including low-cost bidders, to participate at any supply level, the bidders would not know whether the final auction clearing price for their price-taker tranches would cover the cost to supply those tranches. This is a strong disincentive to offering price-taker tranches in the first instance. This means it is unlikely those tranches will be pursued, causing the aggressive bidding behavior of low-cost suppliers to be lost. Thus, the price-taker proposal would not preserve the potential benefits of a no load cap auction.

Similarly, Dr. LaCasse concedes that a load cap could result in Ameren customers paying more for power. (LaCasse Jt. Tr. 978). The same dynamic applies even as to financial bidders (those not owning generation). A restrictive load cap could exclude the lowest cost risk manager from participating fully in the auction, thereby resulting in higher auction prices. (LaCasse Reb. Resp. Ex. 12.0 at 32:796-798). Marketers and traders with superior risk management capabilities, like generation owners, may elect to skip Illinois' auction if the number of tranches they are permitted to bid on and win is too low to be profitable or efficient. (Collins Reb. IIEC Ex. 6 at 8:155-158).

It should be beyond dispute that the level of participation by efficient, low-cost or low-price suppliers should not be curtailed for the sake of an appearance of competition. In any case, as to market power problems and other market weakness, Dr. LaCasse testified that "[a] measure

imposed on bidders at the auction is not going to change the realities of the wholesale markets." (LaCasse Reb. Resp. Ex. 12.0 at 40:971-974).

Thus, according to its proponents, the load cap is a remedy for certain market or auction weaknesses. However, it is doubtful that load caps will provide the corrective effects those proponents describe.

b. Thirty-Five Percent (35%) Load Cap

In response to the comments of other parties regarding its load cap proposal, Ameren revised the proposal. Ameren's revised auction rules would impose a lower 35% load cap -- further constraining the unfettered operation of market forces. (Nelson Reb. Resp. Ex. 10.0 at 11:253-254). In determining that a load cap of 35% was appropriate, Ameren relied on the opinion of Dr. LaCasse. (Nelson Reb. Resp. Ex. 10.0 at 12:265-271).

In her rebuttal testimony, Ameren witness Dr. LaCasse presents her evaluation of the various load cap proposals offered in the testimonies of Staff and intervenors. She described how she assessed higher and lower load caps and their effects on her balance of the associated benefits and costs. (LaCasse Reb. Resp. Ex. 12.0 at 26:621-636). Dr. LaCasse's opinion was based on four evaluation criteria or factors: effect on participation; controlling gaming through overstatements of interest; limiting bidders' influence on auction results; and diversification of supplier risk. (LaCasse Reb. Resp. Ex. 12.0 at 26:621-631). Her evaluation was entirely qualitative and subjective. She conducted no quantitative analyses or auction simulations to support her conclusions. (LaCasse Jt. Tr. 908; IIEC Cross Ex. 3 (IIEC 4-2, 4-8)).

Based on her qualitative, subjective evaluation, Dr. LaCasse concluded that:

- The load cap is unlikely to limit the participation of bidders in the auction;

- The load cap imposes needed discipline on bidders' ability to over-represent the amount of supply they wish to bid into the auction;
- The load cap appropriately limits the influence that any one bidder can have on the results of the auction; and
- The load cap serves to limit Ameren's and ultimately customers' exposure to any one supplier.

As Mr. Collins demonstrated in his rebuttal, these conclusions are unsupported and ignore the interests of consumers. (Collins IIEC Reb. Ex. 6 at 5:89-11:217).

With respect to the IIEC's specific proposal that no artificial limitations be placed on auction bidders, Dr. LaCasse asserts that such unfettered competition in the singular market for an Ameren full requirements product (the proposed auction) will not achieve her subjective balance of benefits and costs. (LaCasse Reb. Resp. Ex. 12.0 at 30:735-738). As demonstrated below in the discussion of Dr. LaCasse's four conclusions, each of the purported benefits Dr. LaCasse attributes to the proposed load caps has been shown to be without substantive foundation in the record.

First, it should be noted that Dr. LaCasse has not explained why only these four criteria or factors were evaluated. Second, Dr. LaCasse acknowledges that "a lower load cap could impose costs in terms of limiting participation, and these costs are weighed against the potential benefit in terms of limiting overstatement of interest, curbing influence on the auction results, and diversification of supplier base." (LaCasse Reb. Resp. Ex. 12.0 at 30:731-734). Yet, Dr. LaCasse has not disclosed the weighting she gave to each of these factors in her evaluation. When asked, Dr. LaCasse conceded that it is not possible to predict which of the factors will have the largest impact on auction clearing prices. (IIEC Cross Ex. 3, (IIEC 4-3)).

With respect to Dr. LaCasse's first conclusion, namely that it was unlikely a load cap would limit participation in the auction, no witness has disputed that a load cap might actually prevent efficient suppliers (who are able to offer the lowest bid prices) from offering into the auction the

maximum number of tranches that they could serve at a low price. The result of a load cap that excluded supply from more efficient suppliers would be higher auction prices and, thus, higher prices to Ameren's end-use customers. This is an undesirable outcome directly at odds with the stated purpose of the auction process. Dr. LaCasse indicated the purpose of the auction was to obtain the lowest price. (*See* LaCasse Dir. Resp. Ex. 6.0 at 18:398-400).

Moreover, to the extent that Dr. LaCasse is correct that her proposed load cap is unlikely to limit the participation of bidders in the auction, the load cap is of limited usefulness. Thus, any alleged benefit of load caps attributable to limiting the participation of large bidders may not be achieved. However, the cost associated with artificially limiting market forces will still be imposed on customers.

Dr. LaCasse's second conclusion was that load caps would prevent bidders from overstating their interest in supplying Ameren's needs. Yet, Dr. LaCasse concedes that any bidder could over-represent its interest within the load cap. That is, unless a bidder, seeking to game the auction by over-representing its interest, wanted to bid more than the capped number of tranches, its gaming strategy would not be affected by the cap. (LaCasse Dir. Resp. Ex. 6.0 at 50:1134-1136). As for larger bidders expressing a level of interest in excess of the load cap, Ameren has not presented anything other than Dr. LaCasse's unsupported opinion that the possible costs (excluding low-price supply, and artificially limiting the competitive process) are exceeded by any benefits.

For an auction process dependent on robust competition to operate correctly, the presumption should be in favor of unfettered competition. As Staff witness Dr. Salant testified, it is never desirable (in the absence of anti-competitive behavior) to exclude efficient suppliers from the auction. (Salant Jt. Tr. 1077). Ameren has not offered a compelling justification for its proposed

imposition of artificial, and largely arbitrary, load caps for the auction. (Collins Dir. IIEC Ex. 3 at 9:170).

With respect to Dr. LaCasse's third conclusion, limiting the influence of bidders, IIEC disagrees with Dr. LaCasse's assertion that limiting an efficient bidder's objective influence on the market forces of the auction is desirable or appropriate. IIEC witness Mr. Collins testified:

> By establishing a load cap, the Ameren Companies' proposal would limit the amount of supply that a very efficient bidder could offer into the auction to compete with the supply of others. Limiting this efficient bidder's objective influence on the market forces of the auction would be inappropriate and result in higher market prices. In other words, limiting the number of competing supply tranches reduces the competitiveness of the auction and will likely raise, and certainly not lower, the prices resulting from the auction.
>
> (Collins Dir. IIEC Ex. 3 at 10:180-186).

Mr. Collins' position also has the endorsement of common sense.

Ameren has also proposed that the auction manager be required to limit the amount of information to bidders regarding excess supply remaining in the auction to limit a bidder's ability to influence the auction. If the Commission adopts this proposal, which Ameren has not said is inadequate for its purpose, a load cap is not needed to limit the ability of bidders to improperly influence the auction. Indeed, Dr. LaCasse testified on cross-examination that because of Ameren's proposal to limit the amount of information available to bidders regarding excess supply remaining in the auction, bidders will be unable to profitably withdraw tranches from the auction and thereby manipulate auction prices. (LaCasse Jt. Tr. 785).

With respect to Dr. LaCasse's fourth conclusion, IIEC disagrees that a load cap is needed to limit credit or performance exposure to any supplier. The credit requirements Ameren proposes as an integral part of the auction process are specifically designed to address these risks. Financial

requirements -- not load caps -- are the standard measures to limit the risks of supplier default associated with competitive supply.

Dr. LaCasse regards setting a load cap as "a question of balance." (LaCasse Reb. Resp. Ex. 12.0 at 27:654). And, although she concedes that she did no quantitative work in setting her proposed load cap (LaCasse Jt. Tr. 908), she made a distinctly quantitative adjustment in her load cap proposal -- lowering it from 50% to 35% -- while still offering only subjective qualitative opinions as support for that cap, or for any load caps at all.

Moreover, Dr. LaCasse admits that Ameren's proposed credit requirements are "designed to provide *adequate* financial resources that consumers are not deprived of supply *in the event of a supplier default of any kind*." (LaCasse Jt. Tr. 908, 910, emphasis added). Further, since a large bidder subject to the cap could nonetheless sell power to other auction participants, the risk of supplier default remains. (Collins Dir. IIEC Ex. 3 at 14:278-282). A load cap at any level would be ineffective in mitigating that default risk. Ameren has not provided a compelling reason why a load cap is needed in addition to credit requirements to protect against default risk.

Staff's expert Dr. Salant, like Ameren, argued for having both load caps and financial guarantees. Like Ameren, Dr. Salant did not rely on any quantitative analysis regarding the need for any particular level of load cap. However, unlike Dr. LaCasse, Dr. Salant acknowledges that the question of the appropriate load cap level in the proposed auction process -- 100% (no load cap) or 35% (Ameren's proposal) -- is a quantitative one. But, this record contains no quantitative support for the proposed 35% load cap, or for any load cap at all. Dr. Salant conceded -- notwithstanding his recommendations -- that the need for load caps in the presence of Ameren's proposed financial guarantees was a quantitative question that he (and presumably Ameren as well) could not answer without performing quantitative studies. Dr. Salant testified:

A. Qualitatively, yes, I looked generally at the load caps and the financial guarantees.

Q. And did you find the financial guarantees adequate to protect against the risks they were designed to cover?

A. . . . As I said, I made a qualitative assessment, so qualitatively, there should be load caps. Qualitatively, there should be financial guarantees. . . . Quantitatively what the levels would be requires quantitative analysis.

Q. Would the financial requirements standing alone be adequate to cover the financial risk they were designed to cover?

A. Absent quantitative analysis, I can't give you the calculations of whether that's adequate or not. That's a quantitative question.

(Salant Jt. Tr. 1072-1073).

There is a striking irony in the proposals to curtail competition through load caps in an effort to remedy deficiencies in a market that is alleged to be competitive enough to support an auction in the first instance. (*See generally* Frame Dir. Resp. Ex. 13.0). Load caps should be unnecessary to achieve any of the objectives offered as justification for load caps by Ameren and Staff. If there is a need for load caps then one must question the competitiveness of the wholesale market, which is part of the justification for the auction. If there are no concerns about the competitive state of the wholesale market, then the imposition of load caps is a gratuitous market intrusion that benefits only suppliers, at the expense of consumers. That is not what the legislature intended or contemplated when it mandated that the transition to competition benefit all consumers equitably. (*See* 220 ILCS 5/16-101A(d)(e)).

The Commission has determined in cases since the adoption of the Customer Choice Law that it is the policy of the State of Illinois that all supply options should be considered in order to determine how utilities should meet their customers' demands for service in the least cost fashion. (*See* ICC On Its Own Motion v. Central Illinois Light Company, 2000 Ill. PUC Lexis 963 at 65).

In evaluating the need for load caps the Commission should consider whether they will enable Ameren's ability to meet demand in a least cost fashion. IIEC believes they will not. Load caps should be rejected in this case for the reasons stated above.

Ameren and Staff -- the principal advocates for load caps -- have not shown that any load cap is more beneficial than harmful to the results of the auction. A 35% load cap would be more harmful to open competition (and potentially auction clearing prices) than Ameren's original 50% load cap proposal. And, any load cap at all will (with certainty) distort market forces -- for uncertain benefits. The Commission should reject the artificial barrier to full competition represented by the proposed load cap.

F. Date of Initial Auction

If an auction is approved, the initial auction should be held in September 2006, as proposed by Ameren. (Nelson Reb. Resp. Ex. 10.0 at 14:326-327). Ameren originally proposed to hold the initial auction in May 2006. (Baxter Dir. Resp. Ex. 1.0 at 6:108-110). However, after the exchange of views inherent in the filing of written direct and rebuttal testimonies, all parties except one appear to either support or not oppose a September 2006 date for Ameren's initial auction. The single dissenter from that date is CES, which argues for a May 2006 auction. In IIEC's view, there is no compelling reason for advancing the initial auction to a point in time more than one-half year before the winning bidders will be required to supply power, with the concomitant increases in risk and price.

IIEC Companies and other consumers would have to absorb any price premium attributable to the risks of changes in future market prices. Any such premium can be reduced by an auction

date closer to the time when supplies must be provided. For this and the other reasons detailed below, IIEC supports the September 2006 auction date if an auction is approved.

IIEC witness Mr. Collins recommended an initial auction date of September 2006. (Collins Dir. IIEC Ex. 3 at 6:98-102). Further, IIEC supported simultaneous initial auctions for both ComEd and Ameren in September 2006. (*Id.*).

Staff originally proposed a July 2006 initial auction date. (Schlaf Dir. Staff Ex. 5.0 at 19:402). Both CES and Constellation Energy Commodities Group ("CCG") originally recommended a May 2006 initial auction date. (Bohorquez and Bollinger Dir. CES Ex. 2.0 at 4:61; Smith Dir. CCG Ex. 1.0 at 5:123-132).

In Mr. Nelson's rebuttal testimony, he reported that ComEd and Ameren had agreed on setting the initial auctions for both companies during the first ten days of September 2006. (Nelson Reb. Resp. Ex. 10.0 at 14:326-327). After reviewing rebuttal testimony, Dr. Schlaf revised Staff's position on this issue to support an early September auction date. (Schlaf Reb. Staff Ex. 13.0 at 2:39-40). CCG stated it would not oppose a September 2006 initial auction date. (Smith Reb. CCG Ex. 2.0 at 2:41).

CES, however, maintained its advocacy for a May 2006 initial auction in rebuttal testimony, but indicated a willingness to accept Staff's original proposal for a July 2006 initial auction. (O'Connor Reb. CES Ex. 4.0 at 11:243-244). CES provided three reasons for an earlier initial auction: first, it would provide customers more time to evaluate their choices; second, time is needed to implement a process that is new and untried in Illinois; and third, an early deadline would advance certainty in the environment for customer decisions. (O'Connor Dir. CES Ex. 1.0 at 10:211-256).

Though CES stated that "customers should be the main focus of this proceeding" (O'Connor Dir. CES Ex. 1.0 at 10:217), the longer period for which it argues also coincides with the interests of retail energy suppliers. The longer period for customer decisions provides a longer period for RES marketing.

A May 2006 initial auction date would cause bidders to split their efforts between preparing supply arrangements for the summer peak season in 2006 and preparing for participation in the Illinois auctions. (Collins Dir. IIEC Ex. 3 at 5:82-84). A September 2006 initial auction date would allow bidders to focus their efforts on a single task -- preparing bids for the Illinois auction.

Also, the September 2006 date is a more advantageous date because an auction closer to the time of physical delivery would produce a more accurate price. (Collins Dir. IIEC Ex. 3 at 5:91-95). Reducing the time gap between the auction and actual physical delivery of power reduces bidders' uncertainty in their market pricing forecasts and any associated risk premium. This reduction of forecast uncertainty allows bidders to offer bids that better reflect market conditions at the time of physical power delivery. (*Id.*). Ameren witness Mr. Nelson testified that in Ameren's discussions with suppliers, suppliers preferred September 2006. He explained: "[T]he farther the auction takes place from the delivery date, the more time premium, the more risk there is for suppliers. Hence, they are going to bid up a supply. So they much preferred an auction date close to the delivery date." (Nelson Tr. 190).

A September 2006 initial auction should reduce bidders' risk premiums, yielding more accurate auction prices than an initial auction date of May 2006 and prices lower than they would otherwise be. These are desirable results from a customer point of view, and they are adequate reasons for the Commission to adopt the consensus September 2006 date for initial auctions.

G. Common vs. Parallel Auction

3. Between Ameren and ComEd Products

IIEC supports the notion of a common auction for the Ameren and ComEd territories, should an auction process be approved in this case. IIEC believes that since the load zones would not be bifurcated into two separate auctions under that arrangement, lower market clearing prices would result because a joint auction would be more competitive in both load zones. (Dauphinais Dir. IIEC Ex. 2 at 4:68-77). However, as will be discussed in greater detail in Section V.G.4. below, disparities such as the lack of a single common deliverability test, have the effects of bifurcating the auctions and tending to make them less competitive. Because bidders are unlikely to switch their bids between load zones during auction rounds with such market bifurcation, both load zone auctions become less competitive. (Dauphinais Dir. IIEC Ex. 2 at 6:114-126). The existence of these disparities will deprive customers of the full benefit of a common auction.

In addition to the lack of a common deliverability test, a second disparity between the Ameren and ComEd auctions is the nature of the auction segments. ComEd's fixed price product is supplied through the CPP-A auction. (See Salant Dir. Staff Ex. 1.0 at 32:720). The CPP-A customer load consists of 1 MW to 3 MW (1,000 kW to 3,000 kW) customers, which CES proposes to expand to include 400 kW customers. (See O'Connor Reb. CES Ex. 4.0 at 15:344-350 and 28:608-626). Ameren on the other hand proposes a customer segment for its one-year fixed price auction for the BGS-LFP class that includes all customers 1 MW (1,000 kW) and above. (Cooper Dir. Resp. Ex. 5.0 at 16:352-17:359).

The distinctive customer group definitions used by ComEd and Ameren for their auctions include customers with different load profiles for their annual fixed price products. ComEd's annual CPP-A auction product potentially includes the load of customers with demands ranging

from 400 kW up to a maximum 3,000 kW in one auction. In stark contrast to ComEd's proposed class definition, in this case Ameren has proposed an annual auction product (BGS-LFP) that covers all customers 1,000 kW and above. (*Id.*). The Ameren BGS-LFP class could include customers with demands of 100,000 kW or even 300,000 kW. (Nelson Tr. 184). Thus, the Ameren class or segment is potentially 1,000 kW to 300,000 kW. Because these annual auction customer segments are radically different in terms of load profile, load factor, and the propensity of their members to migrate to and from the annual product, it is unclear how auction suppliers could, as a practical matter, readily "switch" their bids from one auction to the other. As Ameren witness Mr. Blessing explained in cross-examination, the resources and costs used to serve smaller commercial-type loads and larger, higher load factor, industrial-type loads vary significantly. (Blessing Tr. 461-467). He further agreed that suppliers switching their bids between the Ameren and ComEd auctions only makes sense when the two products on which they are bidding are good economic substitutes for each other. If they are not good economic substitutes, then bidders are less likely to make switches between the products. (Blessing Tr. 468-469).

While Ameren and ComEd have totally ignored this practical aspect of their auction designs, the Commission should take steps to promote comparable customer segments and auction products between the Ameren and ComEd auctions. Only if switching between the auctions is facilitated will customers be able to derive the full competitive benefits that a combined auction may offer. As will be discussed in Section V.I.4.b., below, IIEC recommends a separate auction segment for customers with demands greater than 3 MW (3,000 kW) in the ComEd and Ameren auctions. That simple change will help make the ComEd and Ameren products better economic substitutes for each other, thereby promoting switching and more competitive auctions.

4. Common Deliverability Test

The MISO and PJM each perform a test to determine whether capacity resources are deliverable to aggregate load in their respective footprints. (Dauphinais Dir. IIEC Ex. 2 at 6:129-133). The respective tests are designed to identify generating resources that are deliverable, as capacity and "Network Resources," to load within the footprint of the particular Regional Transmission Organization ("RTO") and to eliminate the need for case-by-case transmission studies by the RTO. IIEC believes that if customers are to receive the full benefit of a single auction that is more competitive because bidders are able to switch between the Ameren and ComEd fixed price products, the Ameren Companies (and ComEd) must be directed to work with one another, as well as with the MISO and PJM, to develop a single common deliverability test. That common deliverability test must identify resources in the combined PJM-MISO footprint able to serve load within the ComEd and Ameren service areas within the State of Illinois. IIEC explains its position more fully below.

In its rebuttal testimony, Ameren modified its auction proposal to permit bidders of fixed price products to switch between the Ameren and ComEd fixed price product auctions between rounds, and bidders of hourly-priced products can switch between the Ameren and ComEd hourly-priced product auctions between rounds. (Blessing Reb. Resp. Ex. 11.0 (Revised) at 2:44-3:60). Such switching, in theory, would contribute to additional participation and liquidity in the auctions. If this theory were realized, it would result in lower market clearing prices because the auctions would be more competitive in both load zones, since the Ameren and ComEd load zones would not be bifurcated into two separate auctions. (Dauphinais Dir. IIEC Ex. 2 at 4:68-74). However, despite the modification of auction rules to permit switching, there are practical and economic hurdles to switching that prevent full realization of the theoretical benefit.

The disparate treatment of capacity resources located in the PJM footprint versus those in the MISO footprint for service to Ameren load in the MISO would remain in place under Ameren's proposal. Similarly, the disparate treatment of capacity resources in the MISO versus those in PJM for service to ComEd load in PJM also would remain. Specifically, the MISO and PJM separately perform different tests to determine whether capacity resources are deliverable to aggregate load in their respective footprints. For a capacity resource in one RTO to be deemed deliverable to load in the other RTO, the supplier using that resource must request firm point-to-point transmission service from the capacity resource to the boundary with the other RTO. In addition, case-by-case transmission studies that can be lengthy (at least 60 days) and costly (on the order of tens of thousands of dollars) may be required by the RTO in which the capacity resource is located and the RTO where the load is located. Even if these studies show that the resource is deliverable for one auction, the inter-RTO deliverability finding would not apply in future auctions. New studies would be needed for future auctions.

These hurdles make it impractical and expensive for bidders to rely on capacity resources in the MISO for the ComEd auctions or on capacity resources in PJM for the Ameren auction.

In auctions as proposed by Ameren and ComEd, it is unlikely that there will be much switching by bidders between the Ameren and ComEd auctions. Due to the lack of interchangeability of capacity resources between the Ameren and ComEd load zones, bidders will be inclined to rely on resources inside PJM for the ComEd auction and on resources inside the MISO for the Ameren auction. (Dauphinais Dir. IIEC Ex. 2 at 6:129-7:147, 151-153 and Dauphinais Reb. IIEC Ex. 5 at 3:34-40).

Ameren's proposed modification to allow bidders to switch between the Ameren and ComEd auctions is of limited value and will not provide end-use customers with the full benefit of

a joint auction unless the resource interchangeability issues are resolved. (Dauphinais Dir. IIEC Ex. 2 at 9:184-188 and Dauphinais Reb. IIEC Ex. 5 at 3:39-40).

To resolve the resource interchangeability issue in a way that makes bidder switching more practical, the utilities and RTOs must implement a single common deliverability test, for capacity resources located within the combined footprint of the MISO and PJM for delivery of power to the combined Ameren and ComEd load zones. (Dauphinais Dir. IIEC Ex. 2 at 8:168-171).

As a condition of approval of the Ameren auction proposal, the Commission should require that Ameren work with ComEd, the MISO and PJM to remove, as soon as practicable, impediments that preclude a single common market. This effort should start with the implementation as soon as practical of a single common deliverability test for the delivery of resources in the combined MISO and PJM footprint to the combined load zones of ComEd and Ameren in Illinois. In addition, Ameren should be required to report on the status of the development of a single common deliverability test within 90 days of a Commission order in this proceeding and every 90 days thereafter, until the single common deliverability test is implemented. (Dauphinais Dir. IIEC Ex. 2 at 3:33-45).

I. Fixed Price Auction Product and Tariffed Services for 1 MW and Over Customers

1. Nature of Auction Product and Tariffed Services for 1 MW and Over Customers

Ameren and IIEC agree that a fixed price product is needed for customers 1 MW and over. Given the current state of the retail market, customers require this product. As noted previously, there are in excess of 30 wholesale suppliers who might participate in the auctions. In contrast, only five or fewer RESs (including Ameren's affiliate Ameren Energy Marketing) were active as

RESs in the Ameren territories in 2004. (Stephens Dir. IIEC Ex. 1 at 4-5:77-80). Failure to provide such a product to 1 MW and over customers would deny many of those customers access to a wholesale market with numerous suppliers and force them to seek essential electric service in a market with a limited number of retail suppliers. The Illinois General Assembly intended that all citizens, including 1 MW and over customers, benefit from the wholesale and retail markets. (220 ILCS 5/16-101A(d)).

Finally, Staff acknowledges the need for such service in its report issued subsequent to the Post 2006 Workshops of last year. In its report, Staff suggested that all customers should have access to a fixed price product from the utility. Staff correctly concluded that price stability is an important consideration for all ratepayers, large and small. (*See* Stephens Dir. IIEC Ex. 1 at 6:117-120). Mr. Nelson of Ameren also recognized the importance of price stability in retaining industrial customers in Illinois. (Nelson Tr. 162-163).

For the initial auction at least, Ameren proposes to offer both an annual, auction-based fixed price service and an hourly energy price service to customers in the 1 MW and above range. IIEC does not believe that having only an hourly energy price option will be a sufficient utility default option for any customer group. That single, price-volatile option does not allow customers to enjoy the full benefits of the available competitive markets. (Stephens Dir. IIEC Ex. 1 at 4:62-70). Generally, Ameren proposes to include a segment in its auction for the annual price product, designated the BGS-LFP segment. Once the auction is complete and retail prices are known, customers will have a 30-day enrollment period to commit to taking the service for the full one-year period. Because customers contract for service for the one-year service period, there is minimal, if any, migration risk (the risk that customers will leave the service for a third-party

supply). (Stephens Dir. IIEC Ex. 1 at 11:224-233). IIEC supports Ameren's proposal with some suggested modifications for improvement, as will be discussed in subsequent sections.

IIEC explained in testimony how the offering of this service would not harm Ameren and it would not harm other customers, since under Ameren's proposal, the 1 MW and above segment would be separated from the remaining customer load. (IIEC recommends further protection by having a separate class or auction segment for customers with demands 3 MW and greater, in Section V.I.4.a., below.) Finally, it would not harm development of the competitive retail market. (Stephens Dir. IIEC Ex. 1 at 6-9:121-183).

However, the fixed price service is important to customers in the 1 MW and above group. This is because it will provide a ceiling under which retailers must operate, and will provide discipline to a retail market that lacks a sufficient number of competitors to provide discipline through market forces. (Stephens Dir. IIEC Ex. 1 at 9-10:188-195). In the New Jersey, Maryland and Pennsylvania retail markets for commercial and industrial supply there are 17, 41 and 41 active retail marketers, respectively. (Stephens Reb. IIEC Ex. 4 at 10:204-216). Further, as adduced through cross-examination, both Maryland and New Jersey provided this fixed price service to large customers in the early days of the auction. (O'Connor Jt. Tr. 225-226).

Under the circumstances, Ameren's proposal to offer 1 MW and over customers a one-year fixed price product should be approved.

2. Prequalification of BGS-LFP Load

Because of the nature of relatively large loads, fixed price supply for the 3 MW and above customer segment may prove relatively costly. This is particularly true given the potential for load risk (the risk that actual load will vary from the projection used for the auction). (Stephens Dir.

IIEC Ex. 1 at 12:254-258). IIEC has proposed a method to mitigate this load risk by enhancing the certainty associated with the load profile of these customers in aggregate. IIEC proposed to do this by requiring customers in this group to "prequalify" their load for the auction.

The IIEC approach would prevent customers that are precluded from electing the fixed price service for any reason, or otherwise not interested in being a part of the auction, from exacerbating the load risk to the detriment of other customers in the class. (Stephens Dir. IIEC Ex. 1 at 12-13:258-267). Stated simply, suppliers will not have to worry with load they know in advance they will not need to serve.

This prequalification would not be a commitment to take the ultimate fixed price offer, as the pricing will not be known at that point. Rather, it will be an affirmative indication of eligibility. If a customer does not prequalify its load, Ameren will not need to include that load in the aggregate load for the customer group for the fixed price auction. This should provide greater load certainty to suppliers and allow them to bid more efficiently. (Stephens Dir. IIEC Ex. 1 at 13:269-271). Such a prequalification requirement would not place an undue burden on customers. They would not be asked to commit to purchase power at an unknown price. It would not place an undue burden on Ameren to police customer eligibility, since a customer would have to intentionally misrepresent its status if it were not actually eligible to receive the service. More important, this simple prequalification step should reduce load risk for the bidders and make Ameren's auction more efficient without undue impact on any party. (Stephens Dir. IIEC Ex. 1 at 13-14:278-287). IIEC is not aware of any specific objection from Ameren to the IIEC proposal for prequalification. No other party in the case directly opposed IIEC's recommendation in their direct or rebuttal testimony.

Although IIEC does not believe its proposal to require customers to prequalify their load will completely eliminate all load risk, it will reduce such load risk, which in turn should yield lower auction prices. The IIEC proposal should be adopted.

3. Demand Charge Component for > 1 MW Customers

IIEC recommends the isolation of a demand charge component for customers subject to the BGS-LFP annual auction segment. Energy-only prices, as contemplated by Ameren, would not fully recognize the benefits of load factor in overall customer cost. (Stephens Dir. IIEC Ex. 1 at 14:294-295). IIEC recommends that the energy price resulting from the BGS-LFP auction be modified to isolate a capacity component, which can then be charged on a per kW basis, with the remainder of the auction price being charged on an energy basis. This capacity charge would not be an adder to the auction price. (Stephens Dir. IIEC Ex. 1 at 14:295-298). Ameren proposes to perform a separate capacity auction for use with the hourly price product (associated with the BGS-LRTP segment), or use the MISO capacity market once it is sufficiently developed and approved. Because these capacity values will be readily available, they would provide the most straightforward approach for use in developing the demand charge component in the ultimate customer prices for BGS-LFP. (Stephens Dir. IIEC Ex. 1 at 14:303-306).

In his rebuttal testimony in this case, Ameren witness Mr. Cooper indicated that the Ameren Companies are receptive to including a cost-based capacity or demand component in the rates for the BGS-4 group after full maturity of the MISO markets. (Cooper Reb. Resp. Ex. 15.0 at 17:359-361). Ameren and IIEC have agreed, as shown in the Ameren/IIEC Stipulation, that assuming a declining clock vertical tranche auction is approved, Ameren will agree to propose to implement a cost-based demand charge in the fixed price rate design for whatever rate or tariff applies to 3 MW and customers by the third auction, i.e., by the auction contemplated to be held in February 2009, or

by the first auction subsequent to the time a capacity market is implemented in the MISO, whichever is sooner in time. Accordingly, IIEC agrees that the Commission need not adopt its recommendation for immediate implementation of a capacity charge in this case if it accepts the terms of the Stipulation. (*See* Ameren/IIEC Jt. Ex. 1 Sec. 3). While IIEC recommends the adoption of the Stipulation by the Commission, if the Stipulation is not approved IIEC requests its original proposal be adopted by the Commission for the reasons stated above.

4. Other

a. Multi-Year Auction Product for Large Customers

In its testimony, IIEC originally recommended that a solicitation for a multi-year product be considered in addition to the one-year product for customers subject to the BGS-LFP (annual) auction. Large customers, such as IIEC members, would ordinarily desire a multi-year product. (Stephens Dir. IIEC Ex. 1 at 15:310-316). However, in the context of the Ameren/IIEC Stipulation, IIEC and Ameren have agreed that if the Commission adopts the formal review process for the auction as recommended in the Stipulation, the Commission need not adopt the IIEC recommendation in this proceeding. If the Commission does not adopt the Stipulation on the auction review process, the Commission should consider and adopt IIEC's recommendation as set out in the testimony of its witness Mr. Stephens. (Stephens Dir. IIEC Ex. 1 at 15:322-17:355). Ameren proposes to offer to smaller customers a blended product, which moderates price volatility by replacing only a portion of the supply each year.

IIEC recommended the same general procedures be used for a multi-year product as are used for a one-year fixed product; that is, the product would be bid each year based on load that has prequalified for service. (*See* Section V.I.2., above). Customers would then have a limited

enrollment period once prices are known and must commit to the full multi-year term. (Stephens Dir. IIEC Ex. 1 at 15:314-318). Such a multi-year product could provide benefits to customers who are unable to obtain satisfactory multi-year offers in the retail market. (Stephens Dir. IIEC Ex. 1 at 16:336-339). Ameren would still be able to pass through all supply costs, with the opportunity to reconcile costs with charges.

As part of the agreement reached between IIEC and Ameren, as presented in the Ameren/IIEC Stipulation, if the provision described in Section 2 of the Joint Stipulation is approved by the Commission, the Commission need not adopt IIEC's request for the multi-year auction product, as described herein. (Ameren/IIEC Jt. Ex. 1 Sec. 4 and 2).

b. Separate Auction Segment

IIEC recommends a separate class or auction segment for customers with demands 3 MW and greater. There are three reasons why the load associated with 3 MW and greater customers should be subject to a separate auction or auction segment. First, a separate auction or auction segment would promote uniformity between the Ameren and ComEd products, as described above in Section V.G.3. As discussed, without some coordination of the load characteristics subject to auction, the benefits of suppliers switching bids between auctions could be lost or severely limited.

Second, a separate auction or auction segment would recognize the fact that the load characteristics of the customers in the 3 MW and larger range may be significantly different from the customers in the 1-3 MW range. (*See* Stephens Dir. IIEC Ex. 1 at 11-12:234-243).

Third, for suppliers associated with the 3 MW and larger customer group, there may be load risk (the risk the actual load will vary from the projections used for the auction). (Stephens Dir. IIEC Ex. 1 at 12:238-241). A separate auction segment for 3 MW and over customers could help

prevent what might otherwise be a form of intra-class subsidy associated with the difference in load risk.

This separate solicitation for the 3 MW and larger customer loads could be done in an auction form at the same time as the other CPP auction segments, although a properly designed RFP could also work. (Stephens Dir. IIEC Ex. 1 at 12:246-248).

In its rebuttal testimony in this case, Ameren made a passing reference to IIEC's proposal for a separate auction for 3 MW and above customers and indicated a lack of interest in this segmentation, stating that the Ameren Companies do not intend or expect to replicate their rate books through the auction and a belief that Ameren Companies should behave in a manner consistent with their role as wires companies and not as companies offering a variety of retail generation products to meet specific end-use customer needs. (Blessing Reb. Resp. Ex. 11.0 (Revised) at 22:490-498). In any event, Ameren did not provide any analysis as to why this separate segmentation, which would better recognize the cost of serving these large customers, would increase costs or otherwise harm Ameren, the auction process, or other customers. Accordingly, the Commission should approve a separate solicitation for the 3 MW and larger customers as recommended by IIEC.[4]

K. Regulatory Oversight and Review

1. Nature of Commission Review Before, During, and After Auction

IIEC Companies do not address all aspects of the proposals for Commission review of auction processes and results. Briefly, the IIEC Companies' position is that the Commission should not commit itself and consumers irrevocably to a barely tested procurement process and that there

[4] Similar arguments were made in the ComEd case, Docket No. 05-0159, for the purpose of load uniformity between the auctions.

should be a formal process to review the successes and failures of that process and its various components.

IIEC Companies submit that only a firm schedule of formal proceedings will provide the necessary framework to assure broad stakeholder participation, effective fact gathering and a full record for Commission consideration. There should be a full formal Commission consideration of fundamental issues respecting the proposed novel process for determining consumer rates for regulated services, and a mechanism for revisiting reliance on the proposed auction processes if they do not work as advertised.

4. Formal Proceeding(s) to Consider Process

As part of its procurement auction proposal, Ameren originally proposed that Commission oversight of any approved process take the form of annual informal workshops of stakeholders. The annual workshop process is described in the direct testimony of Ameren witness Mr. Mill. (Mill Dir. Resp. Ex. 4.0 at 13:277-284). As originally proposed by Ameren, the workshops would be convened by the Commission after each auction is completed.

Under Ameren's proposal, formal reviews by the Commission would be conducted only if the Commission opened a formal proceeding on its own motion or in response to a filing under its rules.

It is IIEC's position that the novelty of the proposed auction process and the determinative ratemaking effect of the auction results (under the Ameren proposal) requires a formal review process each year. The review would be a docketed proceeding that affords opportunities for ratepayer participation comparable to those available in other ratemaking proceedings. In addition, each docketed proceeding should be held before the next auction. Informal workshops -- if they are

held -- provide no assurance that proposals for either fundamental or modest changes will be addressed by the Commission on the basis of all relevant facts and in a timely manner.

Note that under IIEC's proposal, informal annual workshops would not be precluded. However, IIEC submits that informal workshops alone are an inadequate review mechanism for an auction process that will determine the largest component of customer bills.

Ameren and IIEC have reached an agreement with respect to the formal review of the Ameren auction process. (*See* Ameren/IIEC Jt. Ex. 1 Sec. 2).

> Section 2 (Auction Review Proceedings-Second Stipulation)
>
> The Ameren Companies, assuming the Commission approves a declining clock vertical tranche auction, agree to (i) an annual formal review of the auction process through a docketed proceeding after the first and second auctions and (ii) thereafter, biennial formal reviews. The auction review process should provide the opportunity for participants to file comments/testimony, response to any comments/testimony, discovery, hearing(s) on the comments/testimony filed, and briefs, and is to be completed in time such that any material changes ordered as a result of the Commission's formal review of the auction process can be implemented in a timely manner prior to the next auction. For the sake of clarity and for illustrative purposes, the Ameren Companies have proposed that the first auction be held in September 2006 and, therefore, the first formal annual review would take place after September 2006; the Ameren Companies anticipate that the second auction will take place no later than February 2008 and, therefore, the second formal annual review would take place after February 2008; the Ameren Companies anticipate that all subsequent auctions will occur no later than February and, therefore , the first formal biennial review of the auction process would take place after February 2010.

IIEC recommends that the Commission accept the terms of the Stipulation for periodic formal reviews of the auction process. It does not prejudice the interests of any other party to this proceeding and represents a prudent compromise between the positions of the utility and its large customers. If, however, the Commission does not accept the Stipulation between Ameren and IIEC with respect to the formal review of the auction process, then IIEC recommends the Commission

accept the recommendation for an annual formal review as set out in the testimony of IIEC witness Mr. Collins. (Collins Dir. IIEC Ex. 3 at 15:292-17:340; Collins Reb. IIEC Ex. 6 at 11:219-15:320).

VII.

TARIFF AND RATE DESIGN ISSUES

B. Matters Concerning Rider MV

4. Rider MV – Retail Customer Switching Rules

a. Enrollment Window

i. Duration of Window

IIEC supports Ameren's proposed 30-day enrollment window for customers electing service under Ameren's annual fixed price product. Proposals by certain parties related to expanding the 30-day sign-up window for the annual fixed price product to 75 days should be rejected. As acknowledged by several other witnesses, this expansion of the sign-up period will increase risk to potential suppliers and in turn increase auction prices. Thirty days represents a reasonable balance of the competing interests of offering customers time to make decisions on competitive supply options and keeping the bid price premiums to a minimum.

Staff witness Dr. Schlaf analyzed this issue carefully in this docket. He recommended the 30-day enrollment window. (Schlaf Dir. Staff Ex. 5.0 at 6:129-132). Dr. Schlaf analyzed the cost impact of extending the enrollment window beyond 30 days and concluded that 30 days remained appropriate for the initial auction. (Schlaf Reb. Staff Ex. 13.0 at 2-5:45-110).

IIEC supports the 30-day sign-up window because the evidence in this docket clearly indicates that a longer sign-up window would produce a risk premium from suppliers, which would in turn increase auction prices. This is confirmed by Ameren witness Mr. Blessing who stated:

> [I]ncreasing the open enrollment period from 30 to 75 days and, as a result, asking the BGS-LFP Suppliers to hold their price open for an additional 45 days will increase the resulting auction price for the BGS-LFP [annual fixed price] product. (Blessing Reb. Resp. Ex. 11.0 (Revised) at 28:631-634, explanation added).

Similarly, as IIEC witness Mr. Stephens reports, ComEd witness Mr. McNeil, a utility expert and a witness in the ComEd procurement case, has testified that:

> [S]uppliers will require greater compensation (i.e., price premiums) for the costs associated with their risks if the rate is held open for a longer time period. (*See* Stephens Reb. IIEC Ex. 4 at 12:247-251, footnote 9).

This potential for price increase is also acknowledged by two potential auction participants at the wholesale level, namely CCG witness Mr. Smith (Smith Dir. CCG Ex. 1.0 at 3:83-88) and by Dynegy witness Mr. Huddleston (Huddleston Jt. Tr. 1041-1042).

Certain competitive RESs have advocated an expansion of the 30-day window to 75 days. Their purpose in doing so was made clear in the cross-examination of Staff witness Dr. Schlaf. Dr. Schlaf testified as follows:

> Q: And isn't it also that the longer the enrollment window, the more opportunity for there to be price changes in market?
>
> A: There will be price changes with an additional enrollment period, that is true.
>
> Q: How does that advantage the RES?
>
> A: It is possible, especially in areas where there is little competition, that a higher auction price perhaps due to an increased enrollment period might make it easier for RESes to make offers to customers.
>
> (Schlaf Jt. Tr. 1349).

CES has supported its request for a 75-day window by comparing the sign-up window for the fixed price product with the current 75-day sign-up window that applies to ComEd's PPO

service. (O'Connor Dir. CES Ex. 1.0 at 8:165-168, 30:671-673). As explained by IIEC witness Mr. Stephens, the comparison of the annual fixed price product to PPO is misplaced:

> PPO prices are administratively determined, based on limited snapshot views of wholesale market conditions. Such prices do not result from direct solicitations of retail power supply by ComEd, where power is actually procured and resold to customers, as would be the case in the BGS auction. In many cases, the wholesale transactions used to set PPO prices may have nothing to do with ComEd (or Ameren) load. In contrast, the annual fixed price option in this case is an actual power supply offer, which wholesale suppliers take on risk to provide to Ameren customers. (Stephens Reb. IIEC Ex. 4 at 13:261-268).

IIEC also notes that the length of the PPO sign-up window has no effect on PPO prices:

> It would not matter if the signup window was one day or 365 days for PPO, since none of the wholesale entities are actually seeking to serve Ameren (or ComEd) customers via the PPO rate. In fact, prior to the most recent market value index case, ComEd made PPO election periods open for much longer periods of time than 75 days, and AmerenIP currently gives most customers less than 30 days to decide. (Stephens Reb. IIEC Ex. 4 at 13:270-275).

Staff witness Dr. Schlaf stated in cross-examination that some number of days between 30 and 75, such as 40 or 45, would be a compromise between the two positions. (Schlaf Jt. Tr. 1339-1340). However, he ultimately confirmed that he would not have a problem if the Commission adopted the 30-day enrollment window. (Schlaf Jt. Tr. 1348).

Hence, the record is well established that expanding the enrollment window beyond 30 days will very likely increase auction prices, as suppliers account for additional risk in making their offers in the auction. As indicated above, the only large customers in this docket, IIEC, have indicated a preference for the 30-day window with the lower price premiums, compared to a longer window which will increase the auction prices. The Commission should adopt a 30-day enrollment window. If for any reason the Commission determines a longer enrollment window is needed for

small customers, the 30-day enrollment window should apply to larger customers (3 MW and over).

10. Alternative Proposals re: Interruptible Service

Ameren's auction proposal does not provide for demand response through interruptible electric service. IIEC witness Mr. Dauphinais notes demand response is critical for mitigating very high market prices and maintaining supply adequacy during periods when supply adequacy is very tight. (Dauphinais Dir. IIEC Ex. 2 at 13:282-283). No Ameren witness disputed this in this case. Indeed, the Commission itself has made clear its intent to encourage energy efficiency and demand response programs. (*See e.g.*, Nicor Dkt. 04-0779, Final Order, Sept. 20, 2005 at 192-193).

The MISO offers an Interruptible Demand program and a Demand Response Resource Program. Network Resources (i.e., capacity resources) do not need to be carried for interruptible load that qualifies as Interruptible Demand under Section 70.1.1. of the Open Access Transmission and Energy Markets Tariff for the MISO ("MISO EMT"). (Dauphinais Dir. IIEC Ex. 2 at 13:291-298). Interruptible loads that are monitored by the MISO and permitted to make offers into the MISO's markets to interrupt energy consumption are considered to be Demand Response Resources (Dauphinais Dir. IIEC Ex. 2 at 12:271-274).

In direct testimony, IIEC witness Mr. Dauphinais recommended non-residential customers taking fixed price bundled service, including BGS-L customers, should be provided the option to directly participate as Demand Response Resources. (Dauphinais Dir. IIEC Ex. 2 at 13:286-289). Because no cost for capacity need be incurred to serve customer load that qualifies as Interruptible Demand, Mr. Dauphinais also recommended that the BGS-LRTP contract, Rider MV and Rider RTP-L be modified such that Ameren hourly pricing customers with load that qualifies as

Interruptible Demand would not be charged for capacity, but would be interruptible by the MISO pursuant to the MISO EMT. Any MISO penalties incurred due to the failure of a customer to interrupt service when notified by the MISO would be directly assignable to the customer. (Dauphinais Dir. IIEC Ex. 2 at 14:300-317).

In his rebuttal testimony, Mr. Dauphinais offered what he termed as a "better alternative" for Interruptible Demand under Rider RTP-L. Specifically, Mr. Dauphinais testified that since capacity does not need to be procured for that portion of hourly pricing customer load that meets Interruptible Demand requirements, each of the Ameren Companies could purchase all of the power supply and ancillary services needed for the Interruptible Demand portion of hourly pricing customer load directly from the MISO rather than through BGS-LRTP suppliers. He noted this would eliminate a concern raised by Ameren in regard to apportioning Interruptible Demand among multiple BGS-LRTP suppliers. Under this "better alternative" a customer would simply be required to designate in advance whether its Interruptible Demand at a particular delivery point is first through the meter, last through the meter or a percentage of customer total load. This designation approach would be consistent with the designation approach currently used by AmerenIP for specifying the allocation of load at a delivery point between bundled electric service, Rider PPO service and service under SC 110 for power purchased from a RES. (Dauphinais Reb. IIEC Ex. 5 at 7:129-9:173).

While Ameren raised some concerns with IIEC's recommendations on Demand Response Resources and Interruptible Demand in its rebuttal and surrebuttal testimony, Ameren ultimately entered into a Stipulation with IIEC on these interruptible electric service issues as follows:

> **Section 1 (Interruptible Service-First Stipulation)**
>
> The Ameren Companies, assuming the Commission adopts a form of BGS-LRTP service, are willing to adopt the IIEC "better

> alternative" recommendation as set forth in IIEC Exhibit 5, pages 7 through 9, as follows: The Ameren Companies are agreeable to an interruptible demand service for BGS-LRTP customers with demands of 5 MW or greater. The service offers a non-fixed price product by providing a choice of BGS-LRTP service or combination of BGS-LRTP and MISO interruptible service, to all customers of the Ameren Companies who have demands of 5 MW and greater, and are eligible for BGS-LRTP and who meet the MISO Interruptible Demand requirements. The service does not include a fixed price product in combination with the BGS-LRTP product, the MISO interruptible product, or some combination of the BGS-LRTP and MISO interruptible products.
>
> ******
>
> IIEC agrees that if the Commission adopts the IIEC's "better alternative," IIEC shall not seek rehearing of, or otherwise challenge, the Commission's failure to adopt or approve any other demand response program in the Consolidated Dockets.
>
> (Ameren/IIEC Jt. Ex. 1 Sec. 1).

IIEC believes this Stipulation is a reasonable compromise for the purpose of resolving the interruptible electric service issue in this proceeding. It secures Ameren support for IIEC's "better alternative" for Interruptible Demand Service for hourly pricing customers 5 MW and larger in exchange for IIEC dropping pursuit of its Demand Response Resources proposal in this proceeding. Moreover, it is consistent with the Commission's aforementioned intent to encourage energy efficiency and demand response programs. IIEC recommends the Commission approve the Ameren/IIEC Stipulation on Interruptible Electric Service.

11. Other

a. Self-Generation Customer Capacity Charges

Ameren has proposed to offer its self-generation customers, 5 MW or larger, hourly pricing under Rider RTP-L. These customers include, but are not limited to, customers with generation

facilities that are Qualifying Facilities under the Public Utility Regulatory Policies Act of 1978 ("PURPA"). (Dauphinais Dir. IIEC Ex. 2 at 9:191-196).

Rider RTP-L customers would be charged a capacity charge derived from Ameren's proposed BGS-LRTP auction. These customers would pay for energy based on the real-time locational marginal price for their load zone within the MISO. (Dauphinais Dir. IIEC Ex. 2 at 9:197-201).

IIEC witness Mr. Dauphinais testified self-generating customers generally have a very low load factor and generally only draw energy during limited periods of the year, mostly confined to maintenance outages taken during off-peak times of the year. He further indicates capacity charges for self-generating customers should reflect their ability to schedule generation maintenance during off-peak periods of the year and the unlikely occurrence of outages during peak system load conditions or simultaneous with other outages. He testified if capacity charges are not specifically developed in this manner, such capacity charges should only apply for those days on which a self-generating customer actually draws energy. He further noted FERC regulations related to PURPA require consideration of these factors for utility rates for back-up power and maintenance power sales to Qualifying Facilities. (Dauphinais Dir. IIEC Ex. 2 at 10:202-11:232).

Mr. Dauphinais testified that while his understanding is that Ameren proposes to bill capacity charges for Rider RTP-L customers on a per kW-day basis, Ameren's language in its proposed Rider MV is not consistent with this approach. (Dauphinais Dir. IIEC Ex. 2 at 12:256-263). Specifically, Ameren's proposed Hourly Auction Supply Charge (HASC) in Rider MV applicable to Rider RTP-L customers has been defined on a per kW-month basis rather than a per kW-day basis. (*See* Resp. Ex. 4.1-CILCO, Resp. Ex. 4.1-CIPS and Resp. Ex. 4.1-IP at Original Sheet No. 27.047).

In response to Mr. Dauphinais' concern, Ameren witness Mr. Cooper testified on rebuttal that Ameren will bill Rider RTP-L customers for capacity on a per kW-day basis. (Cooper Reb. Resp. Ex. 15.0 at 18:373-377).

IIEC supports Ameren's proposed use of a per kW-day approach for billing Rider RTP-L customers for capacity because it appropriately only bills self-generation customers for capacity on the days they actually draw energy from Ameren. However, Rider MV needs to be modified to reflect per kW-day billing. To this end, IIEC recommends the Commission require Ameren to modify its proposed Rider MV such that Rider RTP-L customers will be assessed the HASC (i.e., capacity charges) on a per kW-day basis rather than a per kW-month basis, consistent with Ameren's stated intention.

C. Additional Tariff and Rate Design Issues

3. Rider D – Default Supply Service Availability Charge

Ameren has proposed a new Rider D – Default Supply Service Availability Charge. As proposed, Rider D would assess a 0.015¢ per kWh charge on all customers with a demand 1,000 kW or higher that are either taking Rider RTP-L hourly pricing service or taking service from a RES. Revenue collected under Rider D is directly flowed to BGS-LRTP suppliers. (Cooper Dir. Resp. Ex. 5.0 at 33:716-35:750; *also see* Schlaf Dir. Staff Ex. 5.0 at 10:225-227). IIEC opposes the Rider D charge because it has no cost basis and it applies Rider RTP-L related rates to customers who do not take service under Rider RTP-L. (Dauphinais Dir. IIEC Ex. 2 at 16:342-351). Staff and CES also oppose Ameren's Rider D proposal. (Schlaf Dir. Staff Ex. 5.0 at 3:56-57; O'Connor Dir. CES Ex. 1.0 at 9:183-189).

Ameren witness Mr. Blessing asserted that Ameren's proposed Rider D is a mechanism through which winning BGS-LRTP suppliers can be compensated for the risk they bear by taking on the obligation of being the default supplier for customers who choose to take service from an Alternative Retail Electric Supplier (ARES). Rider D provides a known revenue stream for the BGS-LRTP suppliers, regardless of the number of customers who elect to take BGS-LRTP service via Rider RTP-L. He argued that unless Rider D is implemented BGS-LRTP suppliers will include a risk premium in their auction prices to address the uncertainty of customer levels. He also indicated that he feared potential BGS-LRTP suppliers may not choose to bid on the BGS-LRTP product without the known revenue stream provided via Rider D. (Blessing Reb. Resp. Ex. 11.0 (Revised) at 41:914-43:973).

Ameren witness Mr. Cooper indicated that Ameren proposed Rider D as a proxy for the capacity planning costs imposed on BGS-LRTP suppliers due to the uncertainty of the customer levels that will be taking the product. He echoed Mr. Blessing's assertions that without Rider D, the price for the BGS-LRTP product will increase or potential suppliers simply will not bid on it. He also asserts the Rider D charge is analogous to an insurance premium. (Cooper Reb. Resp. Ex. 15.0 at 15:299-340).

IIEC, Staff and CES oppose Ameren's Rider D proposal.

Ameren witness Mr. Cooper testified that the 0.015¢ per kWh charge for Rider D was simply set equal to the charge utilized in New Jersey. (Cooper Sur. Resp. Ex. 22.0 at 11:228-230). Mr. Cooper also conceded that it was not based on any Illinois data. (Cooper Tr. 263). IIEC witness Mr. Dauphinais indicated Ameren has provided no cost support for its proposed 0.015¢ per kWh Rider D charge. (Dauphinais Dir. IIEC Ex. 2 at 15:333-338).

IIEC witness Mr. Dauphinais also testified that while it was appropriate to reflect any risk premium associated with a service in the rates for that service, it was inappropriate to reflect such a premium in a non-bypassable charge applicable to customers not currently taking the service. He further testified that BGS-LRTP bidders should simply be permitted to include any risk premium associated with the uncertainty of customer levels in their BGS-LRTP bids, allowing those suppliers to compete to cover this risk. Customers not taking BGS-LRTP service through Rider RTP-L would then not be inappropriately allocated the cost for a service they were not taking. (Dauphinais Dir. IIEC Ex. 2 at 16:342-351).

Ameren has not established a need for Rider D. Ameren has not identified a single supplier who would not bid for the BGS-LRTP product or who would include a significant premium in the bid for this product if the Rider D charge were not implemented. As a further indication that Rider D is not necessary, Mr. Dauphinais reports that ComEd (in Docket No. 05-0159) has not proposed a charge equivalent to Rider D. In fact, no other party in this proceeding has supported Ameren's claimed need for the charge. Similarly, no party in the ComEd proceeding has suggested the need for such a charge for ComEd's auction proposal. (Dauphinais Reb. IIEC Ex. 5 at 9:188-198).

Staff witness Dr. Schlaf also testified that Ameren has not provided any evidence to show implementation of Rider D would encourage bidders to bid on the BGS-LRTP product. Nor has Ameren provided evidence showing that bidders would reduce any risk premiums they may have included in their bids by the amount collected under Rider D. (Schlaf Dir. Staff Ex. 5.0 at 12:261-265).

Ameren conceded it was not aware of any potential supplier in this case testifying they needed Rider D in order to participate in the BGS-LRTP hourly product auction. (Cooper Tr. 294). Nobody knows whether there would not have been bidders in the hourly product auction in New

Jersey if there had been no equivalent to Rider D in New Jersey. (Cooper Tr. 295). Ameren witness Mr. Cooper also conceded he has not testified in regard to any specific conversations with suppliers on Rider D. Ultimately, he acknowledged that he does not really know whether any particular supplier will bid on the BGS-LRTP product, regardless of whether Rider D is implemented. (Cooper Tr. 268-269).

CES witness Dr. O'Connor testified Ameren's proposed Rider D is unduly discriminatory, unreasonable and unjust. He indicated Ameren's proposal requires customers taking RES service to pay for a "service" that is not being utilized and may never be utilized by those customers. He notes that if the Commission were to allow the charge to be imposed, Ameren would succeed in doing something that the Commission has done its best to avoid -- including supply charges in delivery service rates much in the same manner Competitive Transition Charges (CTCs) have been directly attached to delivery service rates during the transition period. (O'Connor Dir. CES Ex. 1.0 at 39:876-40:890). CES panel witnesses Mr. Domagalski and Mr. Spilky expand on this, testifying that Rider D appears to be a form of "exit fee" or "post-transition customer transition charge" that Ameren seeks to impose. They testified that Rider D is a baseless, anti-competitive charge that would deter customers from switching to RES. (Domagalski and Spilky Dir. CES Ex. 3.0 at 12:240-245).

While discounting the magnitude of the effect, Staff witness Dr. Schlaf agrees the extra cost could be a deterrent to retail competition. (Schlaf Dir. Staff Ex. 5.0 at 12:267-13:274). Ameren has not denied the Rider D charge would be applied to customers who were not taking the BGS-LRTP product and may never take the product. Nor does Ameren deny the charge may act as a deterrent to retail competition. Instead, as previously mentioned, Ameren simply attempts to argue Rider D is a form of "insurance" to assure the availability of default service.

CES witness Dr. O'Connor responds to Ameren's "insurance" analogy. He notes that requiring mandatory insurance for your own losses is generally not a practice in Illinois. Insurance involves transferring risk to a third party. That is not the case here, as the supplier will receive both the Rider D charge revenue and full payment for service if a customer is defaulted to the supplier. Furthermore, insurance involves reimbursement or compensation for a specified loss, which is not the case here. Instead, the Rider D charge appears to be a reservation charge for customers to take service from the supplier. Dr. O'Connor concludes that Rider D is not an insurance policy, nor like an insurance policy, and the related charges are neither insurance premiums nor are they like insurance premiums. (O'Connor Reb. CES Ex. 4.0 at 34:750-35:792).

Ameren has the burden of proof in this proceeding to demonstrate that its proposed Rider D is just and reasonable. Ameren has not done so. Even though the size of the proposed charge is small, Ameren has failed to provide any cost support for its proposed Rider D charge. Instead, it has merely copied a charge used in a different state with different markets. And, Ameren admits it is not known whether the charge is truly necessary to attract bidders. Ameren has presented no evidence showing that potential bidders believe they need Rider D implemented to make bidding on the BGS-LRTP product attractive, with or without risk premiums. Ameren has not shown that the Rider D charge will not be a deterrent to retail competition, and Ameren has not identified any reason why Rider D is needed in its auction. Finally, ComEd has not proposed an equivalent charge in its own hourly pricing service.

Ameren has not justified charging customers who are taking service from a RES for a service they do not use and may never use. The Commission should reject Ameren's proposed Rider D.

X.

CONCLUSION

IIEC Companies, for the reasons stated herein, respectfully request that, to the extent an auction process is approved, the Commission:

1. Approve the substantive provisions of the Ameren/IIEC Stipulation (Ameren/IIEC Jt. Ex. 1 Sec. 1-4);

2. Reject the use of a load cap in the auction;

3. Require the initial auction be conducted in September 2006 as proposed by Ameren;

4. Require the Ameren auction be conducted jointly with ComEd as proposed by Ameren;

5. Direct Ameren to work with ComEd, PJM and the MISO to develop a single common deliverability test for capacity and network resources located within the combined PJM and MISO footprint for the delivery of power to the combined ComEd and Ameren load zones within the State of Illinois and to report on the status of that effort to the Commission every 90 days;

6. Approve Ameren's proposal to offer customers with electric demands of 1 MW and over a one-year fixed price product;

7. Require Ameren to incorporate in its tariffs a provision to require 1 MW and over customers to advise Ameren, prior to any auction, of their interest in becoming eligible for the BGS-LFP fixed price product (i.e., prequalify their load);

8. Approve the Ameren/IIEC Stipulation to have Ameren include a capacity component in its retail rates for the annual fixed price product offered to customers with electric demands of 1 MW or more, in accordance with the schedule in the Stipulation (Ameren/IIEC Jt. Ex. 1 Sec. 3);

9. Assuming the Commission does not accept the Ameren/IIEC Stipulation on a process for formal review of the auction process, approve a multi-year product for 1 MW and over customers (Ameren/IIEC Jt. Ex. 1 Sec. 2 and 4);

10. Require a separate auction segment be established for the 3 MW and over customer class;

11. Require the implementation of a process to formally review the results of, and the continued desirability of, any auction process approved in this proceeding, as specified in the Ameren/IIEC Stipulation (Ameren/IIEC Jt. Ex. 1 Sec. 2);

12. Approve Ameren's proposed 30-day enrollment window for larger customers (3 MW or larger) electing service under Ameren's annual fixed price product;

13. Approve the Ameren/IIEC Stipulation on the provision of interruptible electric service for BGS-LRTP customers with demands of 5 MW or more (Ameren/IIEC Jt. Ex. 1 Sec. 1);

14. If the Ameren/IIEC Stipulation on the provision of interruptible electric service (Ameren/IIEC Jt. Ex. 1 Sec. 1) is not approved, require Ameren to (i) permit fixed price customers under Ameren's Rider BGS-L to participate directly as Demand Response Resources in the MISO markets, and (ii) implement IIEC's "better alternative" proposal for Interruptible Demand service for hourly pricing customers under Rider RTP-L so that such customers with load that qualifies as Interruptible Demand are not charged for capacity they do not need;

15. Require Ameren to modify its proposed Rider MV to properly reflect Ameren's express intent to bill customers (including, but not limited to, self-generating customers) taking service under Rider RTP-L for capacity on a per kW-day basis; and

16. Reject Ameren's proposed Rider D – DSSAC charge.

Respectfully submitted by the Illinois Industrial Energy Consumers,

_____

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